
HOUSE BILL No. 1065

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-2; IC 8-1-33.

Synopsis: IURC penalties and merger authority. Provides that certain transactions involving the reorganization of a public utility require approval by the Indiana utility regulatory commission (IURC) after a hearing. Requires a resulting entity to establish procurement goals relating to minority and women's business enterprises and to report annually to the IURC the percentage of total procurements obtained from minority and women's business enterprises. Allows the IURC to impose a civil penalty of not more than \$50,000 per offense if a public utility: (1) has repeatedly violated a law, an order, or an agreement between the IURC and the public utility; or (2) has severe deficiencies that the public utility has failed to remedy. Allows the IURC to impose only existing civil penalties for violations of slamming and cramming laws. Provides that a public utility may not award a bonus to or increase above the cost of living the compensation of the utility's director during the year after a rate increase.

Effective: July 1, 2003.

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January 7, 2003, read first time and referred to Committee on Commerce and Economic Development.

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Introduced

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1065

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-48, AS AMENDED BY P.L.159-2002,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 48. (a) The commission shall inquire into the
4 management of the business of all public utilities, and shall keep itself
5 informed as to the manner and method in which the same is conducted
6 and shall have the right to obtain from any public utility all necessary
7 information to enable the commission to perform its duties. If, in its
8 inquiry into the management of any public utility, the commission finds
9 that the amount paid for the services of its officers, employees, or any
10 of them, is excessive, or that the number of officers or persons
11 employed by such utility is not justified by the actual needs of the
12 utility, or that any other item of expense is being incurred by the utility
13 which is either unnecessary or excessive, the commission shall
14 designate such item or items, and such item or items so designated, or
15 such parts thereof as the commission may deem unnecessary or
16 excessive, shall not be taken into consideration in determining and
17 fixing the rates which such utility is permitted to charge for the service

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which it renders. **The commission shall designate as unnecessary or excessive any:**

(1) bonus; or

(2) increased salary or compensation;

paid to a director, an officer, or a manager of a public utility in violation of section 48.5(b) of this chapter.

(b) For purposes of IC 8-1-2, IC 8-1-8.5, IC 8-1-8.7, IC 8-1-8.8, and IC 8-1-27, wages paid to an independent contractor of a utility for construction or maintenance performed for the utility shall not be found to be excessive merely because the wages are those normally paid for work of the same type and quality in the labor market in which the work for the utility is being performed.

(c) In carrying out its duties and powers under subsection (a) with regard to any utility which sells or generates electricity, the commission may also inquire into or audit a utility's powerplant efficiency and system reliability.

SECTION 2. IC 8-1-2-48.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 48.5. (a) This section applies to the twelve (12) month period beginning on the date on which a public utility receives a:**

(1) general increase in its basic rates and charges;

(2) fuel cost charge; or

(3) gas cost charge;

under section 42 of this chapter.

(b) A public utility may not do any of the following during the period described in subsection (a):

(1) Award a pay bonus to a director, an officer, or a manager of the public utility.

(2) Except to provide a cost of living adjustment based on inflation, increase the salary or compensation of a director, an officer, or a manager of the public utility.

(c) This subsection applies to a public utility that violates subsection (b). When the public utility is next eligible to seek a:

(1) general increase in its basic rates and charges;

(2) fuel cost charge; or

(3) gas cost charge;

under section 42 of this chapter, the commission shall designate as unnecessary or excessive under section 48 of this chapter any bonus or increased salary or compensation paid in violation of subsection (b) and, in determining and fixing the public utility's rates or fuel or gas cost charges, may not consider a bonus or increased salary or compensation paid in violation of subsection (b)

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as an expense of the public utility.

SECTION 3. IC 8-1-2-83 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2003]: Sec. 83. (a) ~~No~~ As used in this section,
"control" means the power to direct the management and policies
of a public utility, utility company, or holding company through:

- (1) the ownership of voting securities or stock;
- (2) the terms of a contract; or
- (3) other means.

The term does not include power derived from holding an official position or corporate office with the public utility, utility company, or holding company. Control is presumed to exist if a person, directly or indirectly, owns, controls, has the power to vote, or has the power to vote proxies that constitute at least twenty percent (20%) of the total voting power of the public utility, utility company, or holding company.

(b) As used in this section, unless otherwise indicated, "holding company" means a company that has control over one (1) or more:

- (1) public utilities; or
- (2) utility companies.

(c) As used in this section, "person" means an individual, a firm, a corporation, a company, a partnership, a limited liability company, an association, a trustee, a lessee, or a receiver.

(d) As used in this section, "reorganization" means a transaction that results in:

- (1) a change in the ownership of a majority of the voting capital stock of a public utility;
- (2) a change in the ownership or control of an entity that owns or controls a majority of the voting capital stock of a public utility;
- (3) the merger of two (2) or more public utilities; or
- (4) the acquisition by one (1) public utility of substantially all assets of another public utility.

(e) As used in this section, "utility company" has the same meaning as the definition of "public utility" under section 1 of this chapter, except that a utility company owns, operates, manages, or controls a plant or equipment located outside Indiana.

(f) A public utility, as defined in section 1 of this chapter, ~~shall~~ may not do any of the following without the approval of the commission after a hearing:

- (1) Sell, assign, transfer, lease, or encumber its **stock**, franchise, works, or system to any other person, partnership, limited liability company, or corporation. ~~or~~



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(2) Contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation. ~~without the approval of the commission after hearing.~~
And no such

(3) Contract for or effect a reorganization of the public utility.

(4) Acquire control, directly or indirectly, of a public utility, utility company, or holding company.

(g) A person may not acquire control, directly or indirectly, of a public utility or the holding company of a public utility without the approval of the commission after a hearing.

(h) A holding company that controls at least one (1) public utility may not acquire control of a utility company without the approval of the commission after a hearing.

(i) A public utility, except temporarily or in case of emergency and for a period of not exceeding thirty (30) days, ~~shall~~ **may not** make any special contract at rates other than those prescribed in its schedule of rates ~~thereof~~ filed with the commission and in force, with any other utility for rendering any service to or procuring any service from such other utility, without the approval of the commission. It shall be lawful, however, for any utility to make a contract for service to or from another utility at rates previously filed with and approved by the commission and in force.

~~(b)~~ (j) The approval of the commission of the sale, assignment, transfer, lease, or encumbrance of a franchise or any part thereof under this section shall not revive or validate any lapsed or invalid franchise, or enlarge or add to the powers and privileges contained in the grant of any franchise or waive any forfeiture. No such public utility shall directly or indirectly purchase, acquire, or become the owner of any of the property, stock, or bonds of any other public utility authorized to engage or engaged in the same or a similar business, or operating or purporting to operate under a franchise from the same or any other municipality or under an indeterminate permit unless authorized so to do by the commission.

~~(c)~~ (k) Nothing contained in this section shall prevent the holding of stock lawfully acquired before May 1, 1913, or prohibit, upon the surrender or exchange of said stock pursuant to a reorganization plan, the purchase, acquisition, taking, or holding by the owner of a proportionate amount of the stock of any new corporation organized to take over at foreclosure or other sale, the property of the corporation whose stock has been thus surrendered or exchanged.

~~(d)~~ (l) Every contract by any public utility for the purchase, acquisition, assignment, or transfer to it of any of the stock of any other

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public utility by or through any person, partnership, limited liability company, or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such stock upon the books of the corporation pursuant to any such contract shall be effective for any purpose.

SECTION 4. IC 8-1-2-83.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 83.5. (a) As used in this section, "minority business enterprise" has the meaning set forth in IC 4-13-16.5-1.**

(b) As used in this section, "procurement" means a contract or subcontract for the purchase or lease of commodities, supplies, technology, property, or other goods and services necessary for the operation of an entity described in subsection (d).

(c) As used in this section, "women's business enterprise" has the meaning set forth in IC 4-13-16.5-1.3.

(d) The public policy of the state is to encourage the following entities to obtain a fair proportion of their total procurements from minority business enterprises and women's business enterprises:

(1) A public utility that undergoes reorganization under section 83(f)(3) of this chapter.

(2) A public utility that acquires control of a public utility, utility company, or holding company under section 83(f)(4) of this chapter.

(3) A person that acquires control of a public utility or the holding company of a public utility under section 83(g) of this chapter.

(4) A holding company that controls at least one (1) public utility and acquires control of a utility company under section 83(h) of this chapter.

(e) Notwithstanding any other law or rule, an entity described in subsection (d) shall establish goals of obtaining at least:

(1) ten percent (10%) of the dollar value of the entity's annual procurements from minority business enterprises; and

(2) five percent (5%) of the dollar value of the entity's annual procurements from women's business enterprises.

An entity described in subsection (d) shall annually submit to the commission a report that includes the total dollar value of the entity's procurements and the percentage of procurements obtained from minority business enterprises and women's business enterprises.

(f) An entity described in subsection (d) shall make a good faith effort to meet the goals established under subsection (e) and shall

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1 annually demonstrate to the commission that an effort was made
2 to meet the goals.

3 (g) The commission shall establish and administer a unified
4 certification procedure for minority business enterprises and
5 women's business enterprises that enter into procurement
6 contracts with entities described in subsection (d).

7 (h) The commission shall supply entities described in subsection
8 (d) with a list of the minority business enterprises and women's
9 business enterprises the commission has certified under subsection
10 (g). The commission shall review the list annually to determine the
11 minority business enterprises and women's business enterprises
12 that should continue to be certified. The commission shall establish
13 a procedure for challenging the designation of a certified minority
14 business enterprise or women's business enterprise. The procedure
15 must include proper notice and a hearing for all parties.

16 (i) The commission may adopt rules under IC 4-22-2 necessary
17 to implement this section.

18 SECTION 5. IC 8-1-33 IS ADDED TO THE INDIANA CODE AS
19 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
20 1, 2003]:

21 **Chapter 33. Authority of Commission to Impose Civil Penalties**

22 **Sec. 1.** The definitions in IC 8-1-2-1 apply throughout this
23 chapter.

24 **Sec. 2. (a)** The commission may review any of the following or
25 any combination of the following aspects of a public utility's
26 operations:

- 27 (1) Technical, financial, and managerial capacity.
- 28 (2) Physical condition and capacity of the public utility's plant
29 or equipment.
- 30 (3) Compliance with Indiana or federal law or the
31 commission's orders.
- 32 (4) Provision of service to customers.

33 (b) The commission may conduct a review under this section
34 upon:

- 35 (1) the commission's own motion;
- 36 (2) a request of the office of utility consumer counselor; or
- 37 (3) a complaint filed by a customer of the public utility.

38 The commission's order for review must state facts to justify a
39 review by the commission.

40 **Sec. 3.** After a review conducted under section 2 of this chapter,
41 the commission may impose a civil penalty under section 4 of this
42 chapter if the commission finds either of the following:

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1 (1) That the public utility has repeatedly violated:

2 (A) a law regulating the public utility after the commission
3 has ordered compliance;

4 (B) commission orders; or

5 (C) an agreement between the commission and the public
6 utility.

7 (2) That the public utility has severe deficiencies that the
8 public utility has failed to remedy.

9 Sec. 4. (a) If the commission makes a finding under section 3 of
10 this chapter, the commission may, after notice and hearing, impose
11 a civil penalty against the public utility of not more than fifty
12 thousand dollars (\$50,000) for each offense.

13 (b) The secretary of the commission shall deposit civil penalties
14 collected under subsection (a) in the state general fund.

15 (c) Except as provided in subsection (d), the authority granted
16 to the commission under this section is in addition to the powers
17 granted to the commission under any other statute.

18 (d) If, after a review conducted under section 2 of this chapter,
19 the commission determines that a public utility has violated:

20 (1) IC 8-1-29-5; or

21 (2) rules adopted under IC 8-1-29-6;

22 the commission may impose only the civil penalties allowed under
23 IC 8-1-29-7.5.

24 SECTION 6. [EFFECTIVE JULY 1, 2003] IC 8-1-2-48(a), as
25 amended by this act, and IC 8-1-2-48.5(c), as added by this act,
26 apply to a public utility that violates IC 8-1-2-48.5(b), as added by
27 this act, after June 30, 2003.

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